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PUBLIC (SEPARATION (195 48) Department.

SERIES.

P II
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G.O No. 3396

Dated 30--12--1948

[Despatch Abstract.]

SEPARATION OF THE JUDICIARY FROM THE EXECUTIVE - Power to take action under Ss.107 & 108 Cr.P.C. whether it should henceforth vest with the Executive Magistrates - Papers Recorded.

UDICIARY AND EXECUTIVE SHOULD BE SEPARATED.

BOMBAY COMMITTEE'S RECOMMENDATIONS.

POONA, October 17. -- Complete separation of the Judiciary from the executive, it is learnt, has been recommended by the 12-member committee appointed by the Government under the Chairmanship of Mr. N.S.Lokur, a former Judge of the Bombay High Court, to go into the question.

Other main recommendations made by the Committee, it is understood, are that the Collector should remain District Magistrate and head of the police as at present, but only for the purpose of maintaining law and order. He should not try cases or hear appeals and should not be in control of magistrates, who would be called upon to try and decide cases.

The Committee which was appointed in February last held over a dozen sittings during which it recorded oral evidence of 26 distinguished lawyers and members of the judiciary, including Sir Leonard Stone, Chief Justice, and Justice Weston of the Bombay High Court, Dr. M.R.Jayakar, Mr. Chimanlal Setalvad, Mr. K.M.Munshi and Mr.K.F.Nariman.

The Committee, it is further learnt, was of the opinion that there should be two classes of magistrates--executive and judicial. The former should be subordinate to the District Magistrate and the latter to the High Court of Bombay. It has also proposed that that all judicial magistrates should be recruited like sub-judges and possess the same qualifications. They should be given both evil and criminal work not simultaneously but alternatively.

The Committee had suggested that the village police patil should cease to have criminal powers and that panchayat courts might be tried as an experiment.

-- A.P.I.

GOVERNMENT OF MADRAS.
Public (Separation) Department.

Letter No.110/47-1.

From

The Secretary to Government.

To

The Secretary to the Government of Bombay,
Home Department, Bombay Castle, Bombay.

Dated Fort St. George, the 4th November 1947.

Sir,

Separation of the Judiciary from the Executive.

It is inferred from a news-item in the Hindusthan Times, New Delhi, of the 20th October 1947 that the Committee appointed by the Government of Bombay under the Chairmanship of Mr. N.S.Lokur to examine the question of the separation of the Judiciary from the Executive have submitted their report. I am to request that this Government may be kindly furnished with a copy of the Report if it has been printed.

I have the honour to be
Sir,
Yours most obedient servant.

Sd/- x x

Secretary to Government.

No.806/5,
Home Department,
Bombay Castle, 10th March 1948.

From

V.T.Dehejia, Esquire, I.C.S.,
Secretary to the Government of Bombay,
Home Department.

To

The Assistant Secretary to the Government of Madras,
Public (Separation) Department.

Subject: Separation of the Judiciary from the Executive.
Report of the Lokur Committee -
Requisition for a copy.

Sir,

With reference to your letter No.110/47-4, dated the 26th February 1948 on the subject noted above, I am directed to forward herewith a copy of the "Report of the Committee on the Separation of the Judiciary from the Executive". The report is still under consideration of Government.

Yours obedient servant,
sd/- x x
for Secretary to the Government of Bombay,

Copy of letter No.R.O.C.6634/46-B2, dated 28-1-1947 from the Registrar of the High Court of Judicature, Madras to the Chief Secretary to the Government of Madras, Public (General) Department.

Sub: Separation of the Judiciary from the Executive - Report of the Committee - Opinion of the High Court.
Ref: Your letter No.9369/46-1, Public (General), dated 30-11-1946 and 12-12-1946.

The Hon'ble the Judges are in general agreement with the recommendations of the Committee and consider that they outline as satisfactory a scheme for separation as can be devised without an amendment of the Code. Their Lordships note with satisfaction that the Committee has accorded full recognition to the fact that the separation cannot be real until control over the Judicial Magistracy is vested in the High Court. It is the emphatic opinion of Their Lordships that there should be an immediate transference of this control. They strongly deprecate the proposals to postpone the transfer for two years as contemplated in para 181 of the report.

The Hon'ble the Judges have some criticisms to offer regarding the proposals for the division of functions between the Judicial and Executive Magistracy under the preventive chapters of the Code. They consider that the allocation of powers should be well defined and are not in favour of the exercise of concurrent jurisdiction or of the sharing of the inquiry in respect of any proceeding by the two classes of Magistrates. If a matter is properly one for an Executive Magistrate, he should deal with it exclusively and completely; if it is for the judicial Magistrate, the Executive Magistrate should have nothing to do with it. The arrangements suggested by the Committee are cumbrous and might, in their Lordships' opinion, lead to friction and, possibly, to conflict.

3. The Hon'ble the Judges consider that, broadly speaking, all emergency powers and provisions concerned with the preservation of peace should be administered by the Executive Magistrate while provisions requiring an adjudication on evidence or involving a determination of the rights or ~~liberties~~ liberties of the citizen should be dealt with by the Judicial Magistrate. On this basis, Their Lordships recommend that, with the exception of Sections 109, 110 and of course 106, all the powers under Chapters VIII, IX, X, XI and XII of the Code should be vested in the Executive Magistrate. Cases under Sections 109 and 110 should be heard by the Judicial Magistrate.

4. On the question of a combined cadre of Criminal and civil work, Their Lordships consider that the "simultaneous" method outlined in para 116 of the report has considerable advantages over the 'alternating' method which has found favour with the Committee. Their Lordships consider it very desirable that District Munsifs should have experience of Criminal work. The aptitude for criminal as opposed to civil work is largely a matter of training; the initial equipment required for both types of work is very much the same. It is necessary that District Munsifs who are to have higher promotion should have served as Magistrates and it would be an advantage if all Judicial Magistrates had some service as District Munsifs. The ~~main~~ selection proposed at the end of para 119 of the report would be very difficult to make and should not in fairness, be made until a person has received adequate training

in both branches of work. Generally speaking, a person who makes a good District Munsif would make also a good Magistrate if he gets the requisite training and experience in time. The converse also holds good.

5. A system of combined Civil and Criminal Courts is moreover ideally suited to areas of great distances and isolated centres of population, like the Ceded Districts. Their Lordships are not impressed with the objections raised in the report. The allotment of fixed days for civil and criminal work presents no difficulties and the fact that it involves occasional adjournments is not a grave objection. The suggestion that Courts are better situated at a distance so as to discourage futile litigation seems to their Lordships to be deplorable. Their Lordships recognise that it might not be practicable to have combined courts in Districts with heavy civil work but recommend that as far as possible District Munsifs should function also as Magistrates.

6. The Hon'ble the Judges agree with the recommendation of the Committee that the Court of the District Magistrate a when necessary, of his subordinate Judicial Magistrates shou be inspected by the District and Sessions Judge.

7. Regarding recruitment their Lordships consider that a competitive examination followed by a selection would yield the best results. Under the Government of India Act of 193 the agency for the selection has to be the Public Service Commission, and so long as that Act is in force, their Lordships do not favour the suggestion that the selection should be taken outside the purview of the Commission. By virtue of Section 255 of ~~the~~ Selection of the Subordinat Civil Judiciary must necessarily be by the Commission and there appears to be no good reason to draw a distinction between the Criminal and Civil Judiciary in this respect.

8. Their Lordships would point out further that, under Chapter III of Part X of the Act and the regulations framed thereunder, there is no scope for the active association of a representative of the High Court ~~xxx~~ with the Commission in the manner suggested in para 148(3) of the report. It is nevertheless open to Government to give the High Court an effective voice in the selection by calling for a larger list of candidates from the Commission than the number of vacancies demands and by consulting the High Court before making the final choice.

Proceedings of the meeting of the Cabinet Sub Committee to examine the Report of the Committee on the Separation of the Judiciary from the Executive, held on the 27th September, 1947.

PRESENT.

Hon'ble Dr. P. Subbarayan,
Chairman

Hon'ble Sri M.Bhaktavatsalam
Hon'ble Sri H. Sitharama Reddi
Hon'ble Mr. Daniel Thomas
Hon'ble Sri K.Madhava Menon.

Members

S.V.Balakrishna Iyer, I.C.S.,
Additional Secretary, Public Department.

Secretary.

The following decisions were taken:

I. The Scheme of Separation should be proceeded with immediately and should not be deferred as suggested by the Board of Revenue

II. The Scheme of Separation should be extended to the Province as a whole and not merely to a few selected districts as suggested by the Board of Revenue.

III. The principle of the Alternating Method is approved as regards Sub Divisional Magistrates and District Munsifs. An exception to this principle may be made as regards appropriate districts, e.g., Anantapur, Bellary, Cuddapah and Kurnool.

IV. (a) The principle of having one District Magistrate (Judicial) for 2 revenue Districts is approved for districts like Anantapur, Bellary, Cuddapah and Kurnool.

(b) The question as to what other districts this method of clubbing can be extended should be investigated.

V. The recommendations of the Committee as regards the allocation of functions were generally approved. It was, however, decided that the power to take action under Section 107, Cr. P.C., should be exclusively left to the Executive Magistrate, while the power to hear cases arising under Section 108, Cr. P.C. should be with the Judicial Magistrate.

The emergency arrangement detailed in paragraphs 88 to 91 of the Report of the Committee should be retained.

VI. (a) On the question as to what the method of recruitment of Judicial Officers should be, it was decided that the question should be further examined, whether a competitive examination should be held or whether a Commission should be asked to submit a list containing x twice as many names as there are vacancies out of which Government would make the appointment.

(b) The machinery of recruitment should be the Public Service Commission.

VII. The ultimo control over the Criminal Judicial Officers should be with the High Court even initially.

VIII. The recommendations of the Committee as regards the designation of District Office (para 155 of the Report) were accepted.

IX. The Secretary was authorised to call for proposals from the Board of Revenue for retrenchment in the Revenue Department on the assumption that practically the entire criminal work will be taken away from that Department, that the entire province will become ryotwari and that there will be a special staff to work out the transition from zamindari to ryotwari tenures.

It was generally felt that the areas of the existing revenue divisions might be enlarged by ~~xxdigx~~ adding at least one taluk to the existing Revenue Divisions and the total number of Revenue Divisional Officers thus reduced. A similar procedure was to be attempted as regards the Deputy Tahsildars.

It was agreed that the next meeting of the Cabinet Sub Committee should be held at 5.15 P.M. on the 29th October 1945.

P.V.Balakrishna Iyer,
SECRETARY.

(True copy)

Additional Secretary to Govt.,
Public Department.

To

The Members of the Cabinet Sub-Committee on Separation of the Judiciary from the Executive.

Public (Separation)Deptt.

Separation of the Judiciary from the Executive Bombay Committee's recommendations - U.O.No. 5013-I.A & P.H.-47-1, dated 3-11-1947.

The recommendations of the Bombay Committee as summarised in the news extract from 'The Hindusthan Times' of New Delhi, dated 20th October 1947 are substantially the same as those of the Rajah Iyer Committee in this Province. The only difference in the recommendations appears to be that in Bombay it is intended to call the Collector 'District Magistrate whereas in this province it is intended to call him 'Additional District Magistrate'. Probably, after further examination, Bombay might adopt the nomenclature suggested by Rajah Iyer Committee.

In the Cabinet Sub Committee, the recommendations of the Rajah Iyer Committee were modified in two particulars:

(i) Accepting the suggestion of the High Court, the Cabinet Sub Committee decided to adopt the "Simultaneous" method for certain districts like the Ceded Districts. This adjustment is primarily intended to suit conditions peculiar to these districts and may it is submitted stand.

(ii) In deference to the views expressed by H.M.(Prohibition), it was decided in the Cabinet Sub Committee to vest powers to take action under Section 107, Cr.P.C. exclusively in the Executive Magistrate. To that extent there has been a departure from the principle of separation.

The Government of Bombay is being addressed for a copy of the Report of the Committee. If on an examination of the report after it is received it is seen that in Bombay power to act under Sec.107, Cr.P.C. is given to Judicial Magistrates, for orders whether I should bring up this topic again for further consideration in the Cabinet Sub-Committee.

Intd. x x
5/11
H.M.(P

I think cases under Sec.107 should remain with District Magistrates, but after the receipt of the ~~similar~~ report we must ask the committee whether they will accept what has been decided by us or reconsider the matter, in view of what Bombay Committee has recommended.

Intd. x x
5/11/47.

Lie over till receipt of a copy of the eport from Bombay.

Intd. x x
6/11/47.

The point that has been considered in this file is, in whom the power to take action under sections 107, and 108 Cr. P.C. should vest, whether it is to remain with the Executive Magistrates or the Judicial Magistrates under the scheme of separation. It was decided by the Cabinet Committee at its first meeting to vest powers to take action under section 107 Cr.P.C. exclusively in the Executive Magistrates. The Government of Bombay were requested to send a copy of the Report of the Lokhur Committee with a view to see whether there is any change in their scheme of separation with respect to the vesting of powers to take action under section 107 Cr.P.C. In form and substance, the recommendations of the Bombay Committee in this behalf are the same as those of the Madras Committee. The Government of Bombay have not passed final orders on the scheme of separation adumberated in the Lokhur Committee Report. From the papers it would appear that the scheme is under consideration by the Government.

In another file, the H.Ms. of the Cabinet Committee had minuted that the scheme of Separation need not be proceeded with and that the Cabinet Committee itself might be wound up. In the circumstances, no further action appears to be necessary in this file and the papers may be recorded in a miscellaneous G.O. for future reference.

GOVERNMENT OF MADRAS.
Abstract.

SEPARATION OF THE JUDICIARY FROM THE EXECUTIVE - Power to take action under Secs.107 & 108 Cr.P.C. Whether it should vest with the Executive Magistrate or Judicial Magistrates - Papers recorded.

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PUBLIC (SEPARATION) DEPARTMENT
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G.O.Ms.No.3396. Dated 30th December 1948.
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ORDER:

RECORDED.

(True copy)

A. Thiagarajan 2.12

KRVD.1.12. OFFICE ASSISTANT, M.R.O.

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